competition commission
south africa

Statement on the decisions of the Competition Commission

Date: 07 July 2016

1. Key decisions on Enforcement

Competition Commission launches an investigation against Transnet

The Competition Commission (Commission) has initiated an investigation against Transnet SOC Ltd (Transnet) for excessive pricing in contravention of section 8(a) of the Competition Act and exclusionary practices in contravention of section 8(c) of the Competition Act, in the provision of port services.

The Commission's investigation emanates from information indicating that the South African Port charges are much higher than the global average, as well as information indicating that Transnet is giving preferential treatment to certain customers to the exclusion of others.

The Commission will conduct a full investigation to assess whether or not Transnet has contravened the Competition Act as alleged.

The Commission has taken a decision to non-refer (i.e. not to prosecute) the following cases:

a) **Bertie Rautenbach v World Sports Betting (Pty) Ltd, LM Bookmakers CC, Playa Bets (Pty) Ltd and Grand Play (Pty) Ltd T/A grandplay.co.za and bet.co.za (Pty) Ltd –** *The Commission found that the conduct complained of does not contravene the Competition Act.*

b) **Busisiwe Radebe v Vumatel -** *The Commission found that the conduct complained of does not contravene the Competition Act.*

c) **Dinesh Haribhai v White Rock Properties (Pty) Ltd-** *The Commission found that the conduct complained of does not contravene the Competition Act.*

d) **M.D Magagula v Nedbank Limited**- *The Commission found that the conduct complained of does not contravene the Competition Act.*

2. Key decisions on Mergers and Acquisitions

Proposed merger between Abbott Laboratories (Abbott) and Alere Incorporated (Alere)

The Commission has approved without conditions the intermediate merger whereby Abbott intends to acquire 100% of the issued share in Alere. Post-merger, Abbott will control Alere.

Abbott is a global health care company that focuses on the discovery, development, manufacture and sale of broad and diversified line of health products. Alere is a global firm which focuses on manufacturing of diagnostics, and also provides services and products for patients self-testing and consumer diagnostics to over 40 countries in the world.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the affected markets. In addition, the proposed transaction is unlikely to raise public interest concerns.

Proposed merger between Bunker Holding A/S (Bunker Holding) and Amoil (Pty) Ltd (Amoil)

The Commission has approved without conditions the intermediate merger whereby Bunker Holding intends to acquire 100% of the issued share capital in Amoil.

Bunker Holding is involved in the purchase, sale and supply of fuel, oil, gas and related products, as well as risk management and associated services. Amoil is a marine fuel and lubricants trader and its customers are also ship or vessel operators worldwide.

The Commission found that the proposed merger is unlikely to affect employment. In addition, the proposed transaction is unlikely to raise public interest concerns.

Proposed merger between Hudaco Trading (Pty) Ltd (Hudaco Trading), the Business of UPS Direct (Pty) Ltd (UPS) and The Business of Matla Third Party Maintenance (Pty) Ltd (Matla)

The Commission has approved without conditions the intermediate merger whereby Hudaco Trading intends to acquire UPS and Matla.

The Hudaco Group specialises in the importation and distribution of industrial and security products in South Africa. The activities are carried out in various divisions of Hudaco Trading. UPS and Matla distribute secured power products such as stand-by batteries, inverters, UPS systems and generators.

The Commission found that the proposed transaction is unlikely to result in any employment loss and thus will not have a negative effect on employment. Furthermore, the Commission found that the proposed transaction does not raise any other public interest concerns. The Commission found that the proposed transaction is unlikely to

substantially prevent or lessen competition in the market in which the merging parties' activities overlap.

Proposed merger between Sanofi and The Consumer Healthcare Business (CHC Business) of Boehringer Ingelheim (BI)

The Commission has approved without conditions the intermediate merger whereby Sanofi intends to acquire CHC Business from BI.

Sanofi is active in the research, development, manufacture and sale of health care products in three principal business areas, namely pharmaceuticals, human vaccines and animal health. The CHC Business is owned and operated by BI. BI is active worldwide in the development, production, distribution and marketing of pharmaceutical products more particularly prescription products, OTC products, biopharmaceuticals and animal health products.

The Commission found that the proposed transaction will have no effect on other manufacturers and packagers of Expectorant products. Furthermore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets in South Africa. The proposed transaction does not raise any other significant public interest concerns.

Proposed merger between Geomer Investments (Pty) Ltd (Geomer Investments), The Ceejay Trust (Ceejay Trust), Gingko Trading (Pty) Ltd (Gingko Trading) and Gingko Investments No.2 (Pty) Ltd (Gingko Investments), African and Overseas Enterprises Limited (A&O)

The Commission has approved without conditions the intermediate merger whereby, Geomer Investments, Ceejay Trust, Gingko Trading and Gingko Investments intends to acquire 75.89% of the share capital of A&O.

Geomer is an investment holding company which holds investments in the equities market as well as the mining, agricultural, telecommunications, property, water and sanitation services, education services and medical technology sectors. The Ceejay Trust, Gingko Trading and Gingko Investments are investment holding companies which hold investments in the equities market. In addition, the Ceejay Trust and Gingko Trading also own immovable properties primarily in the residential property sector. A&O has a controlling interest in REX, which is listed on the Johannesburg Stock Exchange under the Retailers Soft Goods sector. REX operates through wholly-owned subsidiaries being Queenspark and Queenspark Distribution. Queenspark is active in the retailing of fine quality men's and women's clothing and related clothing through a chain of Queenspark branded stores in South Africa.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Claremont Holdings (Pty) Ltd (Claremont) and the business of Kim Porter CC t/a Motorport Table View (Target Business)

The Commission has approved without conditions the intermediate merger whereby Claremont intends to acquire the Target Business.

Relevant to the proposed transaction is the Acquiring Group's activities in respect of the sale of new and pre-owned passenger and commercial motor vehicles in the Western Cape through its various motor dealerships. The Acquiring Group also provides after sale services such as parts, accessories, services and repair. The Target Business sells new and pre-owned passenger and commercial Volkswagen branded motor vehicles in Table View, in the Western Cape Province. The Target Business also provides after sale services such as parts, accessories, services and repair.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the sale of used vehicles and the provision of after sale services as there are alternative dealerships that will continue to constrain the merged entity post-merger. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between MSA Holdings (Pty) Ltd (MSA) and Auram Restaurants Company (Pty) Ltd (Auram) and McDonalds SA (Pty) Ltd (McDonald's SA)

The Commission has approved without conditions the intermediate merger whereby whereby MSA intends to acquire the entire issued share capital of Auram and McDonald's SA. Post-merger, MSA will control Auram and McDonald's SA.

The relevant activities of MSA are businesses of AJRD and EFF. AJRD is active in the food stuff and catering industry. EFF is the licensee of McDonald's United Arab Emirates. MSA operates the McDonald's fast food or restaurant business in the United Arab Emirates. Auram and McDonald's SA operate and run McDonald SA fast food or quick service restaurant and franchise in the informal eating out sector throughout South Africa.

The Commission considered the activities of the merging parties and found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market, as there is no overlap between the activities of the merging parties. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between K2016085985 (South Africa) (Pty) Ltd (K2016) and Hyprop Investment Ltd (Hyprop Investment) in respect of Somerset Value Mart

The Commission has approved without conditions the intermediate merger whereby K2016 intends to acquire Somerset Value Mart from Hyprop Investments.

K2016 is active in the sport and lifestyle shoe store chain with various stores located throughout South Africa. Somerset Value Mart is wholly owned by Hyprop Investment, a company listed on the Johannesburg Securities Exchange. In addition, Somerset Value Mart is a retail centre located in Somerset West, in the Western Cape Province.

The Commission found that the proposed transaction is unlikely result in any foreclosure concerns. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between K2015251834 (South Africa) (Pty) Ltd (NewCo) and the Umhlanga College business (the Target School) of Umhlanga College NPC (UC)

The Commission has approved without conditions the intermediate merger whereby NewCo intends to acquire the Target School from UC.

NewCo is a special purpose vehicle company established for the purposes of the proposed transaction and does not provide any products or services. UC is a non-profit organisation and operates the Target School. The target School is a co-educational, Christian ethos, independent school located in Umhlanga, in the KwaZulu-Natal Province. It caters to children from pre-primary, junior primary, senior primary and high school.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the provision of private education. In addition, the proposed transaction does not raise public interest concerns.

Proposed merger between Super Group Trading (Pty) Ltd (SGT) and Certain motor vehicle dealerships (the Target Businesses) in the Western Cape owned and operated by Sandown Motor Holdings (Pty) Ltd and Erven 6253 and 6254, Montague Gardens, held under deed of transfer T8105/2007 and T8106/2007 (the Property) currently owned by Koppieview Property (Pty) Ltd

The Commission has recommended to the Competition Tribunal that the large merger whereby SGT intends to acquire the Target Businesses and the Property be approved without conditions.

The Target Businesses' motor dealerships are located in the Western Cape and sell new and used vehicles. The Property is a purpose built car dealership, which comprises showrooms, workshops and offices and it is the site from which the Mercedes-Benz Century City and Chrysler Jeep Dodge Century City are operated.

The Commission found that the proposed merger is unlikely to substantially prevent or lessen competition in the market for the sale of new and used passenger and commercial vehicles in the Western Cape Province. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Ziningi Properties (Pty) Ltd (Ziningi) and Edendale Mall (Pty) Ltd (Target Property)

The Commission has approved without conditions the intermediate merger whereby Ziningi intends to acquire the Target Property.

Ziningi is a property investment fund that has a portfolio of commercial and retail properties in major metropolitan areas in South Africa. The Target Property is a retail

property located at Corner Moses Mabida and Mount Partridge Road, in the KwaZulu-Natal Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for rentable retail property. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Eiffage Infrastructures Societe Anonyme Simplifiee or its nominee (Eiffage), K2015100020 (South Africa) (Pty) Ltd (Holdco 1) and K2015080775 (South Africa) (Pty) Ltd (Holdco 2)

The Commission has approved without conditions the intermediate merger whereby Eiffage intends to acquire 50.1% shareholding in Holdco 1 and Holdco 2.

Eiffage SA is a leading European French-based company in four main business lines, namely, construction, public works, energy and concessions and public-private partnerships. Holdco 1 and Holdco 2 are newly established entities and do not provide any products or services. Triamic forms part of the H&I group and their activities are incorporated in the H&I Group's activities. The business activities of HICE through its subsidiaries include construction, civil engineering infrastructure and the construction of roads, crushing and obtaining of mineral rock, drill and blasting of rock and farming.

The Commission considered the activities of the merging parties and found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa as there is no geographic overlap between the activities of the merging parties. In addition, the proposed transaction does not raise any other public interest concerns.

Proposed merger between Tradehold Ltd (Tradehold), Imbali Props 21 (Pty) Ltd (Imbali Props 21) and Saddle Path Props 69 (Pty) Ltd (Saddle Path Props 69)

The Commission has approved without conditions the intermediate merger whereby Tradehold intends to acquire Imbali Props 21 and Saddle Path Props 69. Post-merger, Tradehold will control Imbali Props 21 and Saddle Path 69.

Tradehold is an investment holding company that controls Moorgath Inc (Moorgath) and Mettle Investments (Pty) Ltd (Mettle Investments). Moorgarth manages a large portfolio of retail, commercial and industrial properties in the United Kingdom. Mettle offers financing and administration solutions for a wide range of clients who include international corporate firms, small and medium South African firms and individuals. Imbali Props 21 and Saddle Path Props 69 will be used to house the disposal of a portfolio of properties (Sale Properties). The Sale Properties is a portfolio of properties that consist of industrial, office and retail properties located throughout South Africa.

The Commission considered the activities of the merging parties and found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market, as there is no overlap between the activities of the merging parties. In addition, the Commission found that the proposed transaction does not raise any public interest concerns.

Proposed merger between Masimong Technologies (Pty) Ltd (Masimong Technologies) and Tellumat (Pty) Ltd (Tellumat)

The Commission has approved without conditions the intermediate merger whereby Masimong Technologies intends to acquire Tellumat.

Masimong Technologies is a shelf company that has been set up for the purpose of holding shares in Tellumat. The Acquiring Group has interests in firms which are active in the following sectors: media, agriculture, financial services, energy, mining, chemicals and industrials (manufacturing). Tellumat provides a wide range of IT services and designs, manufactures, distributes and installs its own and imported electronic technology products and provides custom solutions for the aviation, telecommunications, defence and contract manufacturing markets.

The Commission considered the activities of the merging parties and found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market, as there is no overlap between the activities of the merging parties

Proposed merger between Nestlé S.A. (Nestlé) and R&R Ice Cream Public Ltd Company (R&R Ice Cream)

The Commission has recommended to the Tribunal that the large merger whereby Nestlé) and PAI Europe V (Fund V) will establish JVCo, which will be an incorporated joint venture be approved without conditions.

Nestlé manufactures and supplies non-frozen food, beverage, and healthcare products. R&R Ice Cream is controlled by Fund V. R&R's entire ice cream businesses globally (including the businesses' intellectual property rights), including R&R SA was formerly owned by Nestlé.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. In addition, the proposed transaction does not raise any public interest concerns.

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